WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
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TO: SENATOR ROBERT WIRCH

FROM: Larry Konopacki, Senior Staff Attorney; and Anna Henning, Staff Attorney

RE: Comparison of Senate Substitute Amendment 2 to 2011 Assembly Bill 426 and 2013 Assembly Bill 1

DATE: January 22, 2013

This memorandum lists and briefly describes key differences between Senate Substitute Amendment 2 to 2011 Assembly Bill 426 (the 2011 substitute amendment) and 2013 Assembly Bill 1 (the 2013 bill).[1] More detail can be provided on any of these items upon request. In addition to the differences noted below, numerous other clarifications, technical changes, and changes to promote consistency in the use of language were made in the 2013 bill as compared to the 2011 substitute amendment.

The 2013 bill retains the majority of the provisions contained in the 2011 substitute amendment. However, in addition to, or with respect to, those provisions, the 2013 bill does the following:

- Makes significant revisions to the requirements related to activities that impact wetlands, largely in response to the comprehensive wetlands law revisions contained in 2011 Wisconsin Act 118.

- Requires that the Department of Natural Resources (DNR) post notice of various actions on its website, in addition to the regular notice requirements. The bill also identifies the date of website posting as the official notice date and authorizes the DNR to use an electronic notification system to notify interested persons of various actions.

[1] An identical substitute amendment (Senate Substitute Amendment 2) was introduced last session for 2011 Senate Bill 488, the companion bill to 2011 Assembly Bill 426. This session, 2013 Senate Bill 1 was introduced as an identical companion bill to 2013 Assembly Bill 1. All references to 2011 Assembly Bill 426 and 2013 Assembly Bill 1 also apply to 2011 Senate Bill 488, and 2013 Senate Bill 1, respectively.

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- Includes ch. 31, Stats., relating to bridges and culverts, in the lists of statutes preempted by the bill with respect to conflicts, public notice, comment, and hearing; issuance of and timelines for DNR decisions; review of DNR decisions; the duration of approvals; and fees for bulk sampling and ferrous mining.

- Modifies the requirement that bulk sampling must be conducted at locations that result in the fewest overall adverse environmental impacts by eliminating the qualification that such locations must be chosen only "to the extent practicable."

- Allows the DNR to modify an approval relating to bulk sampling in order to meet the requirements for the approval, and, as modified, approve the application.

- Requires a prospective mining permit applicant to provide preapplication notification to the U.S. Army Corps of Engineers (ACE), in addition to the DNR, and to make a good faith effort to meet with the ACE to discuss the mining project, the environmental impact report, and information related to federal requirements that may be applicable to the mining project.

- Specifies that any law suit brought to compel the DNR to approve or deny a mining permit if the DNR misses a decision deadline (mandamus action) must be initiated in the county in which the majority of the proposed mining site is located.

- Provides opportunities for contested case hearings related to certain DNR decisions rendered subsequent to the approval of a mining permit.

- Requires that any judicial review of DNR or administrative review decisions related to a mine must be brought in the county in which the majority of the proposed mining site is located.

- Allows holders of easements over property for a particular purpose to exercise many of the rights provided under the bill to landowners and those who lease property.

- Includes a deadline for the submission of a scope statement to the Governor for DNR administrative rules required to be promulgated under the bill, and removes an exemption from the requirement to submit an economic impact analysis related to these rules.

The 2013 bill also adds provisions to clarify the following:

- That a ferrous mining company does not have eminent domain powers.

- That the costs of premiums for bonds required of mine operators may be deducted from net proceeds tax obligations, as is allowed under current law.

- That a ferrous mining operation may not trade for pollution control credits that could allow it to increase a discharge of pollutants above levels that would otherwise be authorized in its water discharge permit.

- That the DNR may change the amount of the reclamation bond if necessary to adequately cover the potential costs of reclamation.

- That ch. 107, Stats., related to leases and conveyances of mining rights, applies to ferrous mining in the same way that it applies to other metallic mining.

The 2013 bill does not contain the following provisions that were contained in the 2011 substitute amendment:

- The minimum net proceeds tax of $1,000,000 per year that would have applied for the first five years after a mining permit is issued and provisions related to reconciliation of the minimum tax over subsequent years.

- The requirement that $1,000,000 per year for the first two years after issuance of a mining permit be distributed from the net proceeds tax for mining skills training grants and mining equipment manufacturing training grants.

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

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